IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.126 OF 1996

Om Shri Finance & Investment Corporation registered through its Managing Partner Shri Chidanand Paratabadi, Age : Major, R/o. 102/D/91, Bhavani Peth, Solapur. ... Appellant

Versus

1. Shri Mohammed A. Sheikh, Proprietor, New Transport, Age : Major, Occupation : Business, R/o. 2090/95 Bhavani Peth, Solapur.
2. The State of Maharashtra (Notice be served upon Government Pleader, High Court, Bombay.) ... Respondents

Mr. M.R. Deshpande for the appellant.

Ms. Sania Miskin h/f Mr. T.K. Patil for respondent 1.

Ms. Rajashree Gadhvi, A.P.P. for respondent 2-State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 10TH SEPTEMBER, 2007.

ORAL JUDGEMENT:-

1. The appellant is the original complainant in Regular Criminal Case No.67 of 1993. Respondent 1 is the original accused (hereinafter, for the sake of brevity, referred to as “the accused”). The accused was tried in the said case for offence punishable under section 138 of the Negotiable Instruments Act, 1881 (for short, “the said Act”). By impugned order dated 31/12/1994, the learned Judicial Magistrate, First Class, Court No.3, Solapur acquitted him of the said charge. Being aggrieved by this judgment, the complainant has preferred the instant appeal.

2. The facts of the case as evident from the complaint and the evidence of the complainant PW-1 Chidanand Gurulingappa is that he is the Managing Partner of Om Shri Sai Finance & Investment Corporation (Regd.) (for convenience, “the said Finance Corporation”). According to him, the accused is dealing in transport business. He applied for loan of Rs.10,000/- for his transport business. The loan was sanctioned and disbursed on 3/2/1992. It was to be repaid by 2/5/1992 with interest at the rate of 21% per annum. After due date, the said Finance Corporation

had made demand for repayment of the loan. The accused made repeated promises and lastly gave cheque for an amount of Rs.10,000/- drawn on Union Bank of India, Solapur Branch. The cheque was dated 20/8/1992. The said Finance Corporation made enquiries with the banker prior to presenting the cheque for repayment. The banker informed that there was no sufficient fund in the bank. Repeated enquiries were made with the accused but the accused did not pay the amount. Ultimately, the said Finance Corporation presented the cheque on 6/11/1992 in their account with Solapur Nagarik Sahakari Bank. The said cheque was returned with endorsement “insufficient fund”. PW-1 Chidanand has tendered in the court the said cheque (Ex-20) and the bankers memo dated 6/11/1992 (Ex-21).

3. The said Finance Corporation then issued notice dated 25/11/1992 (Ex-22). The accused did not reply to the said notice. It appears that thereafter the instant complaint came to be filed.

4. PW-1 Chidanand has been cross-examined. He has admitted in his evidence that he has not filed any application for demand of loan. He has stated that the said Finance Corporation

has not taken any surety, promissory note, agreement of loan or cash receipt for repayment of the said loan. He has also admitted that date and amount in words and figures appearing on the said cheque are not in the handwriting of the accused. He has admitted that the accused was also having a pigmi account bearing No.10 of 1992 with the said Finance Corporation. When the passbook and pigmi entry book were shown to him, he admitted that they are genuine. Passbook and pigmi entry book are at Ex-26 and Ex-27 respectively.

5. The accused examined himself in support of his case and subjected himself to cross-examination. In his evidence, the accused stated that a friend of his advised him to have a pigmi account with the said Finance Corporation so that the said Finance Corporation will sanction loan for his business. He has stated that he became a member of pigmi scheme of the said Finance Corporation and paid Rs.50/- per day. He produced the pigmi passbook which is at Ex-27. According to him, thereafter, he applied for loan of Rs.10,000/-. He was asked to give security for the same. When he asked as to what type of security he should give, he was told the security would be by way of a blank cheque.

He was also asked to pay Rs.900/- towards interest of the loan. He accordingly, issued blank cheque in the month of January, 1992. When cheque (Ex-20) was shown to him, he accepted that the signature on the said cheque was his. He stated that except the signature, nothing written on the said cheque is in his handwriting. He stated that the counterfoil bearing No.EM/SB/C 428633 is counterfoil of Ex-20. The said counterfoil is marked Ex-36. He has stated that the counterfoil is blank. However, on the reverse of the said counterfoil, his munim has written date 21/1/1992 and the name of the payee "Sai Finance". He has clearly stated that this was written in his presence.

6. The accused has stated that he was paying Rs.100/- per day towards repayment of loan taken by him. He has confirmed that the entries made by the said Finance Corporation in passbook (Ex-26) are the same and as per this passbook balance towards the loan is Rs.5,900/-. According to him, further, in the pigmi passbook (Ex-27), Rs.1,550/- are shown to his credit. According to him, considering this balance amount, he has to pay the said Finance Corporation only Rs.4,350/-. He has stated that he is not liable to pay anything more. His case in the evidence is that he is ready to

pay the balance of Rs.4,350/-. However, on one occasion, the complainant's persons came to his office and insisted that he should pay higher amount and threatened that otherwise they will use the blank cheque. Therefore, he instructed the Union Bank of India to stop transactions. He has been cross-examined by the complainant. It is pertinent to note that there is no challenge to his defence in the cross-examination. His evidence in the examination-in-chief has remained undisturbed in the cross-examination.

7. After perusing the evidence on record, the learned Magistrate was of the view that the complainant has failed to prove his case. He, therefore, acquitted the accused. The said order of acquittal is challenged in this appeal.

8. I have heard Mr. Deshpande, the learned counsel appearing for the appellant. He submitted that the accused has admitted his signature on the cheque (Ex-20). He has admitted that he obtained loan in the sum of Rs.10,000/- from the said Finance Corporation. The learned counsel submitted that therefore, the presumptions under sections 118 and 139 of the Negotiable

Instruments Act come to the aid of the complainant. It is not open to the accused to make out a case that instead of Rs.10,000/- an amount of Rs.4,350/- is due and payable. The learned counsel submitted that the defence of the accused that the said cheque was taken as security for repayment of loan is a patently false defence. He submitted that it is inconceivable that a blank cheque would be given by the accused to the said Finance Corporation in this manner. He submitted that the learned Magistrate fell in error in coming to the conclusion that the complainant had prepared a false document and used it in judicial proceedings. The learned counsel submitted that it is also pertinent to note that the accused did not reply to the notice issued by the complainant. Therefore, the accused has admitted the case of the complainant. The learned Magistrate ought to have drawn adverse inference against the accused for not having replied to the notice sent by the complainant. The learned counsel submitted that in the circumstances, the impugned judgment and order be set aside and the accused be convicted in accordance with law.

9. Ms. Miskin, the learned counsel appearing for the accused, on the other hand, submitted that the view taken by the trial court is

the only possible view and, therefore, it should not be disturbed in this appeal against acquittal. She submitted that the complainant has not produced any document to indicate what was the liability of the accused. She submitted that the complainant has admitted that though the accused has signed the said cheque, rest of the contents of the cheque (Ex-20) are not in his handwriting. The accused has stepped in the witness box and has honestly stated that he did take loan from the said Finance Corporation. He has, however, stated that major part of it has been paid and now only a sum of Rs.4,350/- remains to be paid. He has stated that he has opened a pigmi account with the said Finance Corporation and certain amounts are shown to be to his credit in the said pigmi account. He has shown willingness to pay the amount, which according to him, he owes to the said Finance Corporation. His case is that the complainant has misused the blank cheque. The learned counsel contended that this defence of the accused is probabalised. The complainant has failed to establish its case and, therefore, the appeal be dismissed.

10. It is well settled by the Supreme Court in ***State of Rajasthan***

v. Raja Ram (2003) 8 SCC 180 that unless the judgment of the trial court is perverse, it cannot be interfered with in an appeal against acquittal. If the view taken by the trial court is a reasonably possible view, the order of acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. An order of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. However, if the view taken by the trial court is a reasonably possible view, it should not be interfered with. In such a situation, it is not open for this court to substitute its own view in place of the trial court's view. It is, therefore, necessary to find out whether the trial court's judgment is perverse and deserves to be set aside. Needless to say that if the trial court's view is a reasonably possible view, this court will not interfere with it.

11. There is no dispute about the fact that the accused had

applied for a loan of Rs.10,000/- to the said Finance Corporation and the said loan was disbursed on 3/2/1992. It is also not in dispute that the cheque (Ex-20) is signed by the accused. However, rest of the contents of the said cheque are not in his handwriting. It is also admitted that the accused has opened a pigmi account with the said Finance Corporation and Ex-27 is the passbook of the said account. It is also admitted that the complainant issued notice to the accused dated 25/11/1992, however, the accused did not send any reply to the complainant.

12. Ex-20 is the dishonoured cheque. The bank's memo dated 6/11/1992 is at Ex-21. It does appear that the cheque was returned with endorsement “insufficient fund”. Though it is an admitted position that an amount of Rs.10,000/- was advanced to the accused by the complainant, the said Finance Corporation has not produced any document in regard to the loan transaction to substantiate its case that the entire amount of Rs.10,000/- has remained unpaid. As against this, the accused has produced documents pertaining to his pigmi account with the said Finance Corporation. The passbook (Ex-26) shows that the outstanding loan amount to be Rs.5,900/-. As per passbook (Ex-27),

Rs.1,550/- are to the credit of the accused. There appears to be therefore some substance in the contention of the accused that if this amount of Rs.1,550/- is adjusted, only Rs.4,350/- is payable by the accused to the said Finance Corporation. Nothing prevented the said Finance Corporation from producing records in the court to show that no amount was paid by the accused to the said Finance Corporation and the entire amount of Rs.10,000/- is outstanding. The said Finance Corporation has failed to do so.

13. The case of the accused is that the blank cheque was handed over by him to the complainant. He had only signed the cheque and it was misused by the complainant. I have carefully perused all the exhibits. Ex-20 bears No.428633. Its counterfoil is Ex-36. It is in cheque book containing counterfoils which is at Ex-36-A. Counterfoil (Ex-36) is blank. On its reverse, however, date 21/1/1992 is mentioned and the words “Sai Finance” are written. Counterfoils prior to Ex-36 are dated 3/6/1991, 10/8/1991, 22/9/1991, 15/10/1991. 2/10/1991, 25/10/1991, 10/10/1991, 15/12/1991 and 16/12/1991 and counterfoils appearing after Ex-36 are dated 28/2/1992, 6/2/1992 and 11/2/1992. Therefore, the case of the accused that this cheque was given on 21/1/1992 is

probabalised. On the basis of this, the learned Judge has come to the conclusion that the date “20/8/1992” is put by the Complainant. He has, therefore, held that if the cheque was given on 21/1/1992 and it was presented on 6/11/1992, the cheque was not presented within six months of its issuance as required by section 141 of the said Act. The learned Judge, therefore, held that the cognizance was not rightly taken. Upon perusing the exhibits, in the context of the evidence adduced before him, the learned Judge has, therefore, taken a reasonably possible view that cognizance was not rightly taken. He has also held on the basis of the documents produced by the accused in which the liability of the accused is shown to be Rs.4,350/-, that Rs.4,350/- was the only outstanding liability and an amount of Rs.10,000/- was in fact not due and payable by the accused to the complainant. This is a reasonably possible view. It was argued by Mr. Deshpande that under section 20 of the said Act, the holder in due course is entitled to complete a negotiable instrument by filling in the blanks. Section 20 applies to holder in due course. In this case, however, it is not necessary to go into that aspect because it is doubtful whether an amount of Rs.10,000/- is due and payable by the accused to the complainant. In any case, it is reasonably possible to hold that a lesser amount

is payable by the accused to the complainant for which, the complainant can always file appropriate civil proceedings if he so desires. It is true that the accused has not replied to the complainant's notice. But in the facts of this case only on that ground the accused cannot be held guilty. Effect of this could be decided in civil proceedings, if they are initiated.

14. Mr. Deshpande, however, pointed out that the learned Judge had issued notice to the complainant under section 344 of the Criminal Procedure Code for alleged fabrication of false evidence. He pointed out that pursuant to the said notice, the complainant had appeared before the learned Judge and the learned Judge has convicted him for offence punishable under sections 191 and 193 of the Indian Penal Code and sentenced him to undergo simple imprisonment for three months and also to pay a fine of Rs.500/-. He submitted that an appeal has been filed by the complainant challenging the said judgment and order and it is pending in the Sessions Court at Solapur. He submitted that the present judgment will have some repercussions on his defence in the said appeal. In the circumstances, I make it clear that this being an appeal against acquittal, I have dismissed it on the well established

principle that if the view taken by the trial court is a reasonably possible view, the High Court should not interfere with it in an appeal against acquittal. The dismissal of this appeal should not be construed to mean that I have found the complainant guilty of the charges levelled against him. The learned Judge seized of the pending appeal filed by the complainant shall deal with it independently and in accordance with law. The appeal is dismissed.

[SMT. RANJANA DESAI, J.]